

UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF CALIFORNIA

OFFICE OF THE CLERK

2500 Tulare Street
Fresno, CA 93721

Northern District of California
450 Golden Gate Ave
16th Floor
San Francisco, CA 94102

FILED
JUL 28 2008
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

RE: USA vs.
USDC No.: 1:08-MJ-00149-GSA

5-08-mj-70387-R8

Dear Clerk,

Pursuant to the order transferring the above captioned case to your court, dated July 15, 2008, transmitted herewith are the following documents.

Electronic Documents: 1 to 5.

Documents maintained electronically by the district court are accessible through PACER for the Eastern District of California at <https://ecf.caed.uscourts.gov>.

Please acknowledge receipt on the extra copy of this letter and return to the Clerk's Office.

Very truly yours,

July 21, 2008

/s/ M. Sondheim

Deputy Clerk

RECEIVED BY:

Please Print Name

DATE RECEIVED:

NEW CASE
NUMBER:

COMMITMENT TO ANOTHER DISTRICT

Rule 40 Federal Rules of Criminal Procedures

FILED

UNITED STATES DISTRICT COURT	Eastern District of California JUL 16 2008 CLERK, U.S. DISTRICT COURT EASTERN DISTRICT OF CALIFORNIA DEPUTY CLERK
UNITED STATES OF AMERICA VS Osvaldo Marin - Martinez	Docket Number Magistrate Case Number 1:08-mj-00149 GSA
CHARGES AGAINST THE DEFENDANT ARE FILED BASED UPON AN <input type="checkbox"/> INDICTMENT <input type="checkbox"/> INFORMATION <input checked="" type="checkbox"/> COMPLAINT <input type="checkbox"/> OTHER (SPECIFY)	
CHARGING A VIOLATION OF: 8 U.S.C. § SECTION 1326	
DISTRICT OF OFFENSE Northern Dist. of CA	
DESCRIPTION OF CHARGES: Re-entry of Deported Alien into U.S.A.	
CURRENT BOND STATUS: <input type="checkbox"/> Bail fixed at _____ and conditions were not met <input checked="" type="checkbox"/> Government moved for detention and defendant detained after hearing in District of Arrest <input type="checkbox"/> Government moved for detention and defendant detained pending detention hearing in District of Offense <input type="checkbox"/> Other (specify) _____	
Representation: <input type="checkbox"/> Retained Counsel <input checked="" type="checkbox"/> Federal Defender <input type="checkbox"/> CJA Attorney <input type="checkbox"/> None	
Interpreter Required? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes Language: _____	
TO: THE UNITED STATES MARSHAL You are hereby commanded to take custody of the above named defendant with a certified copy of this commitment forthwith to the district of offense as specified above and there deliver the defendant to the United States Marshal for the District or to some other officer authorized to receive the defendant.	
Date 7.16.2008	GARY S. AUSTIN, United States Magistrate Judge

RETURN

THIS COMMITMENT WAS RECEIVED AND EXECUTED AS FOLLOWS:

DATE COMMITMENT ORDER RECEIVED	PLACE OF COMMITMENT	DATE DEFENDANT COMMITTED
DATE I hereby attest and certify on 7/16/08	UNITED STATES MARSHAL	(BY) DEPUTY MARSHAL

that the foregoing document is a full, true and correct copy of the original on file in my office and in my legal custody.

VICTORIA C. MINOR

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

By M. Serrano Deputy

UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

V.

OSVALDO MARIN-MARTINEZ,

Defendant.

CASE NO. 1:08-mj-00149 GSA

DETENTION ORDER

I hereby attest and certify on 7/21/08
 that the foregoing document is a full, true
 and correct copy of the original on file in my
 office and in my legal custody.

VICTORIA C. MINOR
 CLERK, U.S. DISTRICT COURT
 EASTERN DISTRICT OF CALIFORNIA

By M. Senda Deputy

A. Order For Detention

After conducting a hearing on an out-of-district warrant regarding a complaint, the Court orders the above-named defendant detained pending transfer to the Northern District of California.

B. Statement Of Reasons For The Detention

The Court orders the defendant's detention because it finds:

- ☒ By a preponderance of the evidence that no condition or combination of conditions will reasonably assure the appearance of the defendant as required.
- ☐ By clear and convincing evidence that no condition or combination of conditions will reasonably assure the safety of any other person and the community.

C. Findings Of Fact

The Court's findings are based on the evidence which was presented in Court and that which was contained in the Pretrial Services Report, and includes the following:

(1) Nature and circumstances of the offense charged.

- ☒ (a) The crime: Illegal Re-entry Following Deportation, a violation of 8 U.S.C. § 1326, is a serious crime and carries a maximum penalty of 20 years/\$250,000 fine.
- ☐ (b) The offense is a crime of violence.
- ☐ (c) The offense involves a narcotic drug.
- ☐ (d) The offense involves a large amount of controlled substances, to wit: .

(2) The weight of the evidence against the defendant is high.

(3) The history and characteristics of the defendant including:

(a) General Factors:

- ☐ The defendant appears to have a mental condition which may affect whether the defendant will appear.
- ☐ The defendant has no family ties in the area.
- ☐ The defendant has no steady employment.
- ☐ The defendant has no substantial financial resources.
- ☐ The defendant is not a long time resident of the community.
- ☐ The defendant does not have any significant community ties.
- ☒ Past conduct of the defendant: Probation and parole violations/series of deportations.
- ☐ The defendant has a history relating to drug abuse.
- ☐ The defendant has a history relating to alcohol abuse.
- ☒ The defendant has a significant prior criminal record.
- ☐ The defendant has a prior record of failure to appear at court proceedings.

Case 1:08-mj-00149-GSA Document 3 Filed 07/16/2008 Page 2 of 3

(b) Whether the defendant was on probation, parole, or release by a court:

At the time of the current arrest, the defendant was on:

☐ Probation.☐ Parole.☐ Release pending trial, sentence, appeal or completion of sentence.

(c) Other Factors:

☒ The defendant is an illegal alien and is subject to deportation.☐ The defendant is a legal alien and will be subject to deportation if convicted.☒ Other: The defendant is to be transported to the Northern District of California as soon as practicable.

(4) The nature and seriousness of the danger posed by the defendant's release are as follows:

(5) Rebuttable Presumptions

In determining that the defendant should be detained, the Court also relied on the following rebuttable presumption(s) contained in 18 U.S.C. § 3142(e), which the court finds the defendant has not rebutted:

☐ a. That no condition or combination of conditions will reasonably assure the appearance of the defendant as required and the safety of any other person and the community because the Court finds that the crime involves:☐ (A) A crime of violence; or☐ (B) An offense for which the maximum penalty is life imprisonment or death; or☐ (C) A controlled substance violation which has a maximum penalty of 10 years or more; or☐ (D) A felony after the defendant had been convicted of two or more prior offenses described in (A) through (C) above, and the defendant has a prior conviction of one of the crimes mentioned in (A) through (C) above which is less than five years old and which was committed while the defendant was on pretrial release.☐ b. That no condition or combination of conditions will reasonably assure the appearance of the defendant as required and the safety of the community because the Court finds that there is probable cause to believe:☐ (A) That the defendant has committed a controlled substance violation which has a maximum penalty of 10 years or more.☐ (B) That the defendant has committed an offense under 18 U.S.C. § 924(c) (uses or carries a firearm during and in relation to any crime of violence, including a crime of violence, which provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device).☐ c. That the defendant has committed an offense after April 30, 2003, involving a minor victim under sections 1201, 1591, 2241, 2242, 2244(a)(1), 2245, 2251, 2251A, 2252(a)(1), 2252(a)(2), 2252(a)(3), 2252A(a)(1), 2252A(a)(2), 2252A(a)(3), 2252A(a)(4), 2260, 2421, 2422, 2423, or 2425 of Title 18.**D. Additional Directives**

Pursuant to 18 U.S.C. § 3142(i)(2)-(4), the Court directs that:

The defendant be committed to the custody of the Attorney General for confinement in a corrections facility separate, to the extent practicable from persons awaiting or serving sentences or being held in custody pending appeal; and

The defendant be afforded reasonable opportunity for private consultation with his counsel; and

That, on order of a court of the United States, or on request of an attorney for the Government, the person in charge of the corrections facility in which the defendant is confined deliver the defendant to a United States Marshal for the purpose of an appearance in connection with a court proceeding.

IT IS SO ORDERED.

Dated: July 16, 2008/s/ Gary S. Austin

CLOSED

**U.S. District Court
Eastern District of California - Live System (Fresno)
CRIMINAL DOCKET FOR CASE #: 1:08-mj-00149-GSA-1
Internal Use Only**

Case title: USA v. Marin-Martinez

Date Filed: 07/15/2008

Date Terminated: 07/16/2008

Assigned to: Magistrate Judge Gary
S. Austin

Defendant (1)

Oswaldo Marin-Martinez
TERMINATED: 07/16/2008

represented by **Charles J. Lee**

Federal Defender's Office
2300 Tulare Street
Suite 330

Fresno, CA 93721

559-487-5561

Fax: 559-487-5950

Email: charles_lee@fd.org

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Designation: Public Defender or
Community Defender Appointment

I hereby attest and certify on 7/21/08
that the foregoing document is a full, true
and correct copy of the original on file in my
office and in my legal custody.

VICTORIA C. MINOR
CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

By *m. sent* Deputy

Pending Counts

None

Disposition

Highest Offense Level (Opening)

None

Terminated Counts

None

Disposition

**Highest Offense Level
(Terminated)**

None

Complaints






Disposition

None

Plaintiff

USA

represented by **Karen Ann Escobar**
United States Attorney
2500 Tulare Street
Suite 4401
Fresno, CA 93721
(559) 497-4094
Fax: (559) 497-4099
Email: karen.escobar@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
07/15/2008	 <u>1</u>	RULE 5(c)(3) DOCUMENTS RECEIVED as to Osvaldo Marin-Martinez. (Sondheim, M) (Entered: 07/16/2008)
07/16/2008	 <u>2</u>	MINUTES (Text Only) for proceedings held before Magistrate Judge Gary S. Austin on 7/16/2008:INITIAL APPEARANCE re OUT OF DISTRICT WARRANT re COMPLAINT (Northern Dist of CA) as to Osvaldo Marin-Martinez HELD - defendant WAIVES I.D. Hearing. DETENTION HEARING as to Osvaldo Marin-Martinez HELD and SUBMITTED - defendant ORDERED DETAINED and TRANSPORTED back to the Northern District of CA. Osvaldo Marin-Martinez terminated. CASE CLOSED. Government Counsel K. Escobar present. Defense Counsel C. Lee (appointed) present. Custody Status: In Custody. Court Reporter/CD Number: ECRO. (Vasquez, J) (Entered: 07/16/2008)
07/16/2008	 <u>3</u>	DETENTION ORDER as to Osvaldo Marin-Martinez signed by Magistrate Judge Gary S. Austin on 7/16/2008. (Vasquez, J) (Entered: 07/16/2008)
07/16/2008	 <u>4</u>	(Court only) CJA 23 FINANCIAL AFFIDAVIT by Osvaldo Marin-Martinez. (Sondheim, M) (Entered: 07/17/2008)
07/16/2008	 <u>5</u>	COMMITMENT to ANOTHER DISTRICT as to Osvaldo Marin-Martinez signed by Magistrate Judge Gary S. Austin on 7/16/2008. Defendant committed to Northern District of California. (Sondheim,

	M) (Entered: 07/18/2008)
--	--------------------------